IN THE HIGH COURT OF BOMBAY AT GOA

FIRST APPEAL NO. 22 OF 2001
WITH
CROSS OBJECTION NO.18 OF 2001

FIRST APPEAL NO. 22 OF 2001

1. Special Land Acquisition
Officer (South Goa),
Konkan Railway Corporation
Limited, Amey Guest House,
Davorlim Road, P.O.
Navelim, Salcete, Goa,
403 707, and

2. Chief Engineer, Konkan
Railway Corporation Ltd.,
Rawnfond, near Margao
Railway Station, Margao, Goa. ..... Appellants.

Versus

1. Ghanashyam Balsu Dessai
r/o. Kindlem, Canacona, Goa.

2. Yashoda Laxman Dessai,
r/o. Kindlem, Canacona, Goa.

3. Pundalik Narayan Dessai,
r/o. Kindlem- Canacona, Goa.

4. Vijaya Govind Dessai,
r/o. Kindlem, Canacona, Goa.

5. Lata Narayan Dessai,
r/o. Kindlem, Canacona, Goa.

6. Vanita Narayan Dessai,
r/o. Kindlem, Canacona, Goa.

7. Asha Narayan Dessai,
r/o. Kindlem- Canacona, Goa. ..... Respondents.

Mr. E. Afonso, Advocate for the appellants.

Mr. P.A. Kamat, Advocate for th respondents.

CROSS OBJECTIONS NO.18 OF 2001

1. Ghanashyam Balsu Dessai

2. Yashoda Laxman Dessai,

3. Pundalik Narayan Dessai,

4. Vijaya Govind Dessai,

5. Lata Narayan Dessai,

6. Vanita Narayan Dessai,

7. Asha Narayan Dessai,
All r/o. Kindlem-Canacona, Goa. ..... Applicants.

V/s.

1. Special Land Acquisition
Officer (South Goa),
Konkan Railway Corporation
Limited, Amey Guest House,
Davorlim Road, P.O.
Navelim, Salcete, Goa,
403 707, and

2. Chief Engineer, Konkan
Railway Corporation Ltd.,
4th Floor, Souza Towers.
Church Square, Panaji, Goa. 403 001. ..... Respondents.

Mr. P.A. Kamat, Advocate for the applicants.

Mr. E. Afonso, Advocate for the respondents.

CORAM : A.P. LAVANDE, J.

DATE : APRIL 21, 2005.

ORAL JUDGMENT :

The appellants have filed first appeal challenging Judgment and Award dated 11.10.2000, passed by the Additional District Judge III (South Goa), Margao in Land Acquisition Case No.199/1995. The respondents have filed cross objection claiming compensation at the rate of Rs.200/- per sq. metre.

2. By Notification dated 24.7.1991, issued under Section 4(1) of the Land Acquisition Act, 1894 (hereinafter, referred to as `the Act'), the Government acquired large chunks of lands, situated at Nagarcem-Palolem in Canacona Taluka for Konkan Railway Corporation Ltd. Total area admeasuring 2975 sq. metres, belonging to the respondents bearing Survey Nos. 1/35, 1/48, 1/49 and 1/50 which were paddy fields, was part of acquired land. The Special Land Acquisition Officer, by his Award dated 9.12.1993, awarded Rs.9/- per sq. metre for the paddy fields and Rs.17/- for the bharad land.

3. Being dissatisfied, the respondents sought reference. The appellants claimed Rs.200/- per sq. The reference Court enhanced the compensation from Rs.9/- to Rs.24/- per sq. metre, relying upon

the Award dated 15th March, 1989 in respect of land acquired for an approach road to Talpona-Galgibag bridge in Canacona Taluka. The Award was in respect of an area of 1,34,400 sq. metres acquired by Notification dated 30/4/1986, issued under Section 4(1) of the Act

4. The only point for determination which arises in the present appeal is whether the compensation fixed by the reference Court in respect of the acquired lands at the rate of Rs.24/- per sq. metre is legal and justified and, if not, what is the compensation payable in respect of the acquired lands ?

5. Mr. Afonso, learned Counsel appearing for the appellants submitted that the reference Court ought not to have awarded Rs.24/- per sq. metre in respect of the paddy fields inasmuch as the said lands had no building potential. The learned Counsel submitted that in any event, the reference Court ought not to have granted increase of 10 % every year based on the Award dated 15th March, 1989. The learned Counsel further submitted that in connected appeals arising out of the same notification, this Court has granted Rs.19/- per sq. metre for the paddy fields and, therefore, in any event, the compensation cannot exceed Rs.19/- per sq. metre.

6. Per contra, Mr. Kamat, learned Counsel appearing for the

respondents submitted that the reference Court ought to have awarded Rs.200/- per sq. metre in respect of the acquired lands because the acquired lands had building potential. In any event, the learned Counsel submitted that the reference Court was justified in relying upon Award dated 15th March, 1989 granting 10 % increase every year.

7. I have considered the submissions made by the learned Counsel appearing for the parties. In so far as the submission of Mr. Afonso that the reference Court ought not to have relied upon the Award dated 15th March, 1989 is concerned, I am unable to agree with the submission inasmuch as the Award was in respect of similar lands situated in the proximity of the acquired land and, therefore, the reference Court was absolutely justified in relying upon the said Award dated 15.3.1989, for fixing the market rate of the acquired lands. However, I am unable to accept the submission of Mr. Kamat that the reference Court ought to have awarded Rs.200/- per sq. metre since the respondents had not led any evidence to establish that the market rate of the acquired land, on the date of publication of Section 4 notification, was Rs.200/- per sq. metre. I am, therefore, unable to accept the submission of Mr. Kamat that the respondents are entitled to compensation at the rate of Rs.200/- per sq. metre.

8. In so far as the submission of Mr. Afonso that the reference

Court ought not to have granted increase of 10 % every year is concerned, I have already held in number of connected appeals arising under the same Notification that having regard to the fact that the acquired lands are paddy fields and situated at Nagorcem Palolem, Canacona Taluka and also having regard to the fact that there is absolutely no evidence led about any development around the acquired lands in the preceding years of acquisition, increase of 5 % and not 10 % per year would be justified. In other connected appeals, under the same notification dated 24.7.1991, I have awarded Rs.19/- per sq. metre in respect of the paddy fields by granting increase of 5 % every year from 30.4.1986. In the present case also, I hold that the respondents should be given the same rate and accordingly, the compensation payable in respect of the acquired lands is fixed at Rs.19/- per sq. metre.

9. In view of the above discussion, the appeal is partly allowed. The compensation payable in respect of the acquired lands is fixed at Rs.19/- per sq. metre. Consequently, the Cross Objection No.18/2001 filed by the respondent is dismissed.

Having regard to the facts and circumstances of the case, the parties are directed to bear their owns costs.

A.P. LAVANDE, J.

ssm.